DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
PLAINTIFFS: **Anthony Lobato**, *et al.* and PLAINTIFFS-INTERVENORS: **Armandina Ortega**, *et al.* vs. DEFENDANTS: **The State of Colorado**, *et al*.	□ **COURT USE ONLY** □
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DEFENDANTS' MOTION FOR DETERMINATION OF QUESTIONS OF LAW PURSUANT TO C.R.C.P 56(h)	

C.R.C.P. 121 § 1-15 ¶ 8 Certification

Defendants' counsels have conferred in good faith with respective counsel for Plaintiffs and Plaintiff-Intervenors, Kenzo Kawanabe and David G. Hinojosa, respectively. Plaintiffs and Plaintiff-Intervenors oppose this motion.

INTRODUCTION

Education is of paramount importance to the State of Colorado. The Governor, Board of Education, and Department of Education work every day to provide all Colorado children an opportunity for a free public education. Colorado is a national leader in education reform efforts and continues to provide substantial financial support to its public school system. As the traditional base of local financial support for public schools has eroded, the State has taken on an increasingly larger share—now nearly two-thirds of the total funding for K–12 education. Indeed, the State dedicates almost half of its constitutionally constrained general fund budget to the public school system, leaving the remainder to be shared by all other state services such as higher education, health and human services, corrections, and the courts.

Unsatisfied with the State's efforts, Plaintiffs, a group of school districts and parents, filed suit alleging the General Assembly's funding decisions were irrational. (Pls.' 2d Am. Compl. ¶¶ 3–4.) An additional group of parents subsequently joined as Plaintiff-Intervenors. According to both Plaintiffs and Plaintiff-Intervenors, the allegedly irrational funding of public schools precludes Colorado school children from receiving a constitutionally adequate education and infringes on school districts' constitutional guarantee of local control over instruction. (Pls.' 2d Am. Compl. ¶¶ 2–3; Pl.-Intervenors' Compl. at 4–5.) What Plaintiffs and Plaintiff-Intervenors do not acknowledge, however, is that the Constitution guarantees opportunities—not outcomes, and that the actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Moreover, Plaintiffs seek either a dramatic reallocation of funds to public education and away from constitutionally mandated public services, or a massive spending increase despite the fact that Colorado's citizens have enacted strict constitutional revenue limitations, including the TABOR Amendment. Plaintiffs and Plaintiff-Intervenors' claims ignore the deference owed to the General Assembly's budgetary decisions, made within these constitutional constraints, and seek to impose a qualitative educational standard not found in, or sanctioned by, the Colorado Constitution.

Pursuant to C.R.C.P. 56(h), Defendants move this Court to determine the questions of law set forth below. Resolution of these threshold issues, which set the legal standards by which this case must be judged, is critical to enable an efficient trial for both this Court and the parties.

STANDARD OF REVIEW

"At any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order

deciding the question." C.R.C.P. 56(h). "The purpose of Rule 56(h) is, 'to allow the court to address issues of law which are not dispositive of a claim (thus warranting summary judgment) but which nonetheless will have a significant impact upon the manner in which the litigation proceeds.' Resolving such issues 'will enhance the ability of the parties to prepare for and realistically evaluate their cases . . . and allow the parties and the court to eliminate significant uncertainties on the basis of briefs and argument, and to do so at a time when the determination is thought to be desirable by the parties.'" *Matter of Bd. of County Comm'rs of County of Arapahoe*, 891 P.2d 952, 963 n.14 (Colo. 1995) (quoting 5 Robert Hardaway & Sheila Hyatt, Colorado Civil Rules Annotated § 56.9 (1985)).

QUESTIONS PRESENTED

Defendants present the following questions of law for determination:

1. Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt.

2. Plaintiffs and Plaintiff-Intervenors must establish the General Assembly's education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.

3. The Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education.

4. The Education Clause does not guarantee any qualitative educational outcome.

5. The Education Clause must be harmonized with all other constitutional provisions, including TABOR.

6. Any appropriations required by the Education Clause are constrained by TABOR's revenue restrictions.

7. The rational basis standard requires that significant deference be afforded to the General Assembly's fiscal and policy judgments.

8. Elementary and secondary education is not the only required or important state service.

9. It is rational for the General Assembly to control the public debt.

10. It is rational for the General Assembly to further local control over instruction.

11. It is rational for the General Assembly to balance appropriations among public services.

12. TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.

13. This Court may neither coerce nor restrain the General Assembly through injunctive relief.

ARGUMENT

A. Plaintiffs and Plaintiff-Intervenors Must Prove Beyond a Reasonable Doubt that the General Assembly Has Acted Irrationally.

Both Plaintiffs and Plaintiff-Intervenors seek to have the General Assembly's funding decisions declared unconstitutional. (*See, e.g.*, Pls.' 2d Am. Compl. ¶ 3; Pl.-Intervenors' Am. Compl. at 4.) As they ask this Court to undertake "one of the gravest duties impressed upon" it, *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519, 527 (Colo. 2009) (quoting *City of Greenwood Vill. v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000); *Meyer v. Lamm*, 846 P.2d 862, 876 (Colo. 1993)), the proper standard of review must be definitively established before trial.

"The presumption of a statute's constitutionality can be overcome only if it is shown that the enactment is unconstitutional beyond a reasonable doubt." *Barber v. Ritter*, 196 P.3d 238, 247 (Colo. 2008) (citing *Colo. Ass'n of Pub. Employees v. Bd. of Regents of the Univ. of Colo.*, 804 P.2d 138, 142 (Colo. 1990)), *accord Mesa County*, 203 P.3d at 523, 527. Under this burden, "the conflict between the law and the constitution [must be] clear and unmistakable." *Greenwood Vill.*, 3 P.3d at 440 (quoting *People v. Goddard*, 7 P. 301, 304 (Colo. 1885)). "A reviewing court must assume that the "'legislative body intends the statutes it adopts to be compatible with constitutional standards.'" *Mesa County*, 203 P.3d at 527 (quoting *Meyer*, 846 P.2d at 876).

Plaintiffs and Plaintiff-Intervenors' challenges are subject to rational basis review. *Lobato v. State*, 218 P.3d 358, 374 (Colo. 2009) (citing *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1024–26 (Colo. 1982)). As the Supreme Court explained in this case, "[t]o be successful, [Plaintiffs and Plaintiff-Intervenors] must demonstrate that the school finance scheme is not rationally related to the constitutional mandate of a 'thorough and uniform' system of public education." *Lobato*, 218 P.3d at 374 (quoting Colo. Const. art. 9, § 2). Thus, to prevail, Plaintiffs and Plaintiff-Intervenors must prove beyond a reasonable doubt that the General Assembly's education funding decisions are not rationally related to the constitutional mandate requiring it to establish a through and uniform system of free public schools and the constitutional protection of local control over instruction.

Under this "minimally-intrusive" rational basis standard, a "court must give significant deference to the legislature's fiscal and policy judgments." *Lobato*, 218 P.3d at 373–75, *accord Lujan*, 649 P.2d at 1018, 1025 (emphasizing establishment of school finance system properly lies within legislative domain and declining judicial intrusion to devise "better" system); *see also New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (cautioning rational basis review does not

authorize "judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations"). "If any conceivable set of facts would lead to the conclusion that a classification serves a legitimate purpose, a court must assume those facts exist." *HealthONE v. Rodriguez*, 50 P.3d 879, 893 (Colo. 2002) (quoting *Christie v. Coors Transp. Co.*, 933 P.2d 1330, 1333 (Colo. 1997)), *accord Lujan*, 649 P.2d at 1022. Indeed, the challenging party bears the burden of "negat[ing] every conceivable basis," *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973), "[a] State . . . has no obligation to produce evidence to sustain the rationality," *Heller v. Doe*, 509 U.S. 312, 320 (1993), and "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data," *Fed. Communications Comm'n v. Beach Communication, Inc.*, 508 U.S. 307 at 315 (1993). "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Vance v. Bradley*, 440 U.S. 93, 97 (1979). Accordingly, this "court's task is not to determine 'whether a better system could be devised,' but rather to determine whether the system passes constitutional muster." *Lobato*, 218 P.3d at 374 (quoting *Lujan*, 649 P.2d at 1025).

Therefore, Defendants request this Court determine that:

1. Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt; and

2. Plaintiffs and Plaintiff-Intervenors must establish the General Assembly's education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.

B. The Education Clause Guarantees Opportunities Rather Than Qualitative Outcomes.

The Education Clause of the Colorado Constitution, article IX, section 2, requires the General Assembly to "provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state." "On its face, [this provision] merely mandates action by the General Assembly—it does not establish education as a fundamental right, and it does not require that the General Assembly establish a central public school finance system restricting each school district to equal expenditures per student." *Lujan*, 649 P.2d at 1017. Although the General Assembly must establish "guidelines" for a system of free public education, it need not effectuate any particular qualitative experience or outcome. *See id.* As the Colorado Supreme Court has made clear, the Education Clause merely "mandates the General Assembly to provide to each school age child the *opportunity* to receive a free education." *Id.* at 1018–19 (emphasis added). While recognizing this opportunity standard (*see, e.g.*, Pls.' 2d Am. Compl. ¶ 63), both Plaintiffs and Plaintiff-Intervenors repeatedly suggest the Education Clause guarantees outcomes, and significant ones at that (*see, e.g.*, Pls.' 2d Am. Compl. ¶ 2; Pl-Intervenors' Am. Compl. ¶ 21). This suggestion is wrong.

The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. *See Lujan*, 649 P.2d at 1022–23, 1025. The Local Control Clause of the Colorado Constitution, article IX, section 15, vests in local school boards—not the General Assembly—"power or authority to guide and manage both the action and practice of instruction as well as the quality and state of instruction." *Bd. of Educ. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 648 (Colo. 1999). As the Supreme Court emphasized in *Lujan*, evaluating opportunities is difficult enough; interpreting the Education Clause to guarantee outcomes would prove even more unmanageable: "courts are ill-suited to determine what equal educational opportunity is, especially since fundamental disagreement exists concerning the extent to which there is a demonstrable correlation between educational expenditures and the quality of education." 649 P.2d at 1018 (citing, *inter alia*, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 43 n.86 (1973)).

Nor can the Education Clause be construed to create any individual right to receive a thorough and uniform education. Courts interpret constitutional language according to its common and ordinary meaning. *E.g.*, *Washington County Bd. of Equalization v. Petron Dev. Co.*, 109 P.3d 146, 149 (Colo. 2005). Where the Colorado Constitution guarantees individual rights, it does so in plain terms. *Cf.* Colo. Const. art. II, § 3 ("All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness."). The words "thorough and uniform" in the Education Clause refer, not to the specific educational program of each individual student, but to the overall "system of free public schools." *See Lujan*, 649 P.2d at 1017–19. The only reference to individuals is in the succeeding clause, which provides that "all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously." Colo. Const. art. IX, § 2. Thus, although the Education Clause entitles all residents aged six to twenty-one to a free education, *People ex rel. Vollmar v. Stanley*, 255 P. 610, 614 (Colo. 1927), *overruled on other grounds*, *Conrad v. City and County of Denver*, 656 P.2d 662, 670 n.6 (Colo. 1982), it does not guarantee to individuals that this gratuitous education be through and uniform.

As already stated, a contrary construction of the Education Clause would overburden the courts with determinations they are ill suited to make. If individuals are constitutionally entitled to a particular educational experience, then they potentially could seek a judicial forum for any number of complaints—ranging from the failure to secure admittance to an Ivy League college or the right to have Advanced Placement physics taught to a single interested child to any number of purported "individual educational rights." *See Lujan*, 649 P.2d at 1018. In sum, Plaintiffs and Plaintiff-Intervenors' suggestion of a fundamental qualitative right to a particular educational experience for a given individual student redrafts the Education Clause. The constitutional right at issue in this case is the mandate that the General Assembly provide a thorough and uniform *system* of education that provides Colorado's six- to twenty-one-year-olds the *opportunity* to attend free public schools.

Therefore, Defendants request this Court determine that:

3. The Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education; and

4. The Education Clause does not guarantee any qualitative educational outcome.

C. Any Funding Required By The Education Clause Is Constrained By TABOR.

Whatever the meaning of the Education Clause as originally adopted, its reach has been limited by the People's subsequent actions. It is well established "the Constitution, including all amendments thereto, must be construed as one instrument, and as a single enactment." *People v. Field*, 181 P. 526, 527 (Colo. 1919), *accord, e.g., Town of Frisco v. Baum*, 90 P.3d 845, 847 (Colo. 2004) ("'[I]t is essential that we take the Constitution as it is, including every part thereof relating to the subject-matter under consideration, and construe the instrument as a whole, causing it, including the amendments thereto, to harmonize, giving to every word as far as possible its appropriate meaning and effect.'"); *Colo. State Civil Serv. Employees Ass'n v. Love*, 448 P.2d 624, 630 (Colo. 1968) ("Each clause and sentence of either a constitution or statute must be presumed to have purpose and use, which neither the courts nor the legislature may ignore."). This maxim precludes reading the Education Clause in isolation; rather, it must be construed in concert with not just the Local Control Clause, but also the TABOR amendment, article X, section 20, the Gallagher Amendment, article X, section 3, and all other constitutional provisions. Thus, to the extent the Education Clause, Local Control Clause, or Amendment 23, article IX, section 17, require allocation of monies to the public education system, harmonization means the level of that allocation is restricted by the strict revenue limitations imposed by TABOR. The General Assembly cannot be constitutionally required to expend revenue the Constitution does not allow it to obtain.

Even if this Court were to find an irreconcilable conflict between these constitutional provisions, TABOR prevails. First, TABOR is an amendment rather than an original provision like the Education or Local Control Clauses. "Where an amendment to a constitution is anywise in conflict or in any manner inconsistent with a prior provision of the constitution, the amendment controls." *In re Interrogatories by Gen. Ass., H. Joint Res. No. 1008*, 467 P.2d 56, 59 (Colo. 1970) (citing cases). Second, TABOR states that it "supersede[s] conflicting state constitutional . . . provisions." Colo. Const. art. X, § 20(1). Thus, if Plaintiffs and Plaintiff-Intervenors' vision of the Education and Local Control Clause cannot be reconciled with the subsequently adopted TABOR amendment, it is the Education and Local Control Clauses, not TABOR, that must yield. *See, e.g., City of Wheat Ridge v. Cerveny*, 913 P.2d 1110, 1124 (Colo. 1996) (recognizing TABOR's purpose "is to place in the electorate, not government officials, control over state and local government finance, spending, and taxation").

Therefore, Defendants request this Court determine that:

5. The Education Clause must be harmonized with all other constitutional provisions, including TABOR; and

6. Any appropriations required by the Education Clause are constrained by TABOR's revenue restrictions.

D. The General Assembly's Budget Allocations Are Owed Significant Deference.

Despite the General Assembly's significant financial allocations to public schools and its obligation to satisfy other constitutionally-imposed mandates, Plaintiffs contend the public K–12 education system should receive nearly $3 billion additional dollars, as well as billions more for capital funding, in order to be "adequate." (*See* Pls.' 2d Am. Compl. ¶¶ 6–7, 143.) Plaintiffs make this request even though TABOR precludes the General Assembly from either raising new general fund revenue without the People's approval or spending beyond any annual inflation and population growth. Colo. Const. art. X, § 20(4), (7)–(8). Thus, Plaintiffs seek either a judicial repeal of TABOR (*see* Pls.' 2d Am. Compl. ¶ 192) or to usurp the role of the General Assembly by urging the reallocation of almost the entire general fund to public education, without regard to the effect such a reallocation would have on other crucial state services such as higher education, health and human services, corrections, and the courts (*see* Plaintiffs' Reply in Further Support of Motion to Strike Affirmative Defense at 3).

This repeal or reallocation argument suffers from three fundamental flaws. First, as already discussed, in the event of an irreconcilable conflict, it is the Education and Local Control Clauses which must yield to the subsequently adopted TABOR amendment—not vice versa. *See* Colo. Const. art. 10, § 20(1); *Interrogatories*, 467 P.2d at 59. Second, Plaintiffs erroneously assume education is the only constitutional mandate borne by the General Assembly. For example, article VIII, section 1 provides that "[e]ducational, reformatory, and penal institutions, and those for the benefit of insane, blind, and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such a manner as may be prescribed by law." The Constitution also vests the judicial power of the state in a number of courts, requires compensation of judges, and guarantees the courts shall be open to every person. Colo. Const. art. II, § 6, art. VI, §§1, 10, 18. Moreover, the Constitution declares several named educational institutions to be state institutions of higher learning and authorizes the establishment of other such institutions. Colo. Const. art. VIII, § 5. These are just a few of the many areas of constitutional or public policy import the General Assembly must consider when allocating the State's constitutionally limited revenues.

Third, Plaintiffs criticize the General Assembly for making "political" decisions (Pls.' 2d Am. Compl. ¶ 115), but the legislature is a political body, composed of representatives elected by the People, and empowered by the Constitution "to make laws and to appropriate state funds," *MacManus v. Love*, 499 P.2d 609, 610 (Colo. 1972). Colo. Const. arts. III, V, § 1. "It is the peculiar and exclusive province of the legislature, so far, at least, as the judiciary is concerned, to judge of the necessity or desirability *from a political or economic* stand-point of each and every act proposed." *In re Senate Res. Relating to S. Bill No. 65*, 21 P. 478, 479 (Colo. 1889) (emphasis added). Accordingly, "it is incumbent upon the legislature to balance myriad competing interests and to allocate the State's resources for the performance of those services important to the health, safety, and welfare of the public." *Lienhard v. State*, 431 N.W.2d 861,

867 (Minn. 1988); *see also Barone v. Dep't of Human Servs.*, 526 A.2d 1055, 1063 (N.J. 1987) ("State funds available for public assistance programs are limited. It is the Legislature that has the duty to allocate the resources of the State."). "The problems of government are practical ones and often justify, if not require, a rough accommodation of variant interests." *Dawson By and Through McKelvey v. Public Employees' Retirement Ass'n*, 664 P.2d 702, 708 (Colo. 1983) (citing *Mathews v. Lucas*, 427 U.S. 495 (1976)), *accord Heller*, 509 U.S. at 321. Recognizing that this case rests upon inherently political decisions, the Colorado Supreme Court instructed that when determining whether the General Assembly rationally established and maintains a system providing an opportunity to attend free public schools, "significant deference" must be given "to the legislature's fiscal *and policy* judgments." *Lobato*, 218 P.3d at 374–75 (emphasis added).

Exercising "legislative power," Colo. Const. art V, sec. 1, to appropriate limited funds among important state priorities is not irrational. Controlling the public debt, furthering local control over education, and balancing appropriations among public services are all legitimate state purposes evidencing rational legislative action. In *Lujan*, the Court held the use of local property taxation to partly finance Colorado's schools is rationally related to effectuating local control over the public schools of the state. 649 P.2d at 1023. The Court upheld statutory limits on local districts' taxing power because "[t]he purpose of such limitations is essentially to prevent the present pledging of future public funds," and "controlling the public debt" is a "legitimate state purpose." *Lujan*, 649 P.2d at 1024; *see also City and County of Broomfield v. Farmers Reservoir and Irrigation Co.*, 239 P.3d 1270, 1279 (Colo. 2010) (holding "classification between governmental and non-governmental entities under Rule 54(d) is rationally related to the goal of protecting the public treasury because the rule prohibits a water court from awarding costs to a party who prevails against the government"). Thus, deciding to fund prisons, courts, human services, and higher education as well as public K–12 education embodies rationality and demands judicial deference.

Therefore, Defendants request this Court determine that:

7. The rational basis standard requires that significant deference be afforded to the General Assembly's fiscal and policy judgments;

8. Elementary and secondary education is not the only public service required by the Constitution;

9. It is rational for the General Assembly to control the public debt;

10. It is rational for the General Assembly to further local control over instruction; and

11. It is rational for the General Assembly to balance appropriations among public services.

E. TABOR Authorizes Unfunded Educational Mandates.

In addition to challenging the General Assembly's fiscal and policy discretion, Plaintiffs attack the General Assembly's decision to pass legislation without an accompanying appropriation. Plaintiffs allege the General Assembly's "failure to provide funding sufficient to meet [its own legislative and regulatory] requirements violates the rights guaranteed by the Education Clause." (Pls.' 2d Am. Compl. ¶ 179.) Article X, Section 20(9), however, provides that "[e]xcept for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration." This provision "expressly contemplates the state's separate constitutional obligation to provide a uniform system of free public schools throughout the state and acknowledges the state's ability to impose unfunded mandates on local districts to accomplish this goal." *Mesa County*, 203 P.3d at 528. Consequently, the General Assembly may enact education statutes requiring local district action without providing attendant funding.

Therefore, Defendants request this Court determine that:

12. TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.

F. This Court May Not Enjoin the General Assembly.

Plaintiffs' complaint requests "interim and permanent injunctions compelling Defendants to establish, fund, and maintain a thorough and uniform system of free public schools" that fulfills the qualitative mandate of the Education Clause and the requirements of Local Control and that "provides and assures that adequate, necessary and sufficient funds are available to accomplish" those purposes. (Pls.' 2d Am. Compl., Prayer for Relief.) In later briefing, Plaintiffs contend they are requesting nothing more than an injunction to "compel Defendant to exercise the discretion delegated to them by the General Assembly to supervise, accredit, and manage public school funds in a manner consistent with the Education and Local Control Clauses." (Pls.' Reply to Defs.' Resp. to Mot. to Strike at 13.) These positions are contradictory; either Plaintiffs seek to compel legislative action or they do not.

To the extent Plaintiffs do, injunctive relief may not be granted. To respect the fundamental boundary between the legislature and the judiciary, it has been long established that a mandatory injunction may not issue against the General Assembly. *E.g.*, *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 208–09, 11 (Colo. 1991). As the Colorado Supreme Court explained, "[i]t is a general principle in the governmental system of this country that the judicial department has no direct control over the legislative department," and "[l]egislative action by the general assembly cannot be coerced or restrained by judicial process." *Lewis v. Denver City Waterworks Co.*, 34 P. 993, 994 (Colo. 1893), *quoted in Common Cause*, 810 P.2d at 208. Given this precedent and Plaintiffs' contradictory positions, it is imperative that this Court make clear no injunction may issue to compel the "establish[ment]" or "fund[ing]" of the public school system.

The power to fund, granted by the Constitution and constrained by its strict revenue limitations, lies with the General Assembly alone and not with any of the Defendants.

Therefore, Defendants request this Court determine that:

13. This Court may neither coerce nor restrain the General Assembly through injunctive relief.

CONCLUSION

The qualitative debate over public education is properly left to the legislative and executive branches of government and the People of the State of Colorado. As instructed by the Supreme Court, then, Plaintiffs and Plaintiff-Intervenors must prove beyond a reasonable doubt that the General Assembly's chosen school finance scheme is irrational. Significant deference is owed to the legislature's fiscal and policy judgments, and this Court's task is not to determine whether a better financing system could be devised, but rather to determine whether the system passes minimal constitutional muster. Resolution of the presented questions of law is critical to the efficient resolution of this case and will enable all parties and this Court to focus on the substantially deferential and narrow legal standards at issue.

Dated: February 25, 2011

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This is to certify that I have duly served the within **DEFENDANTS' MOTION FOR DETERMINATION OF QUESTIONS OF LAW PURSUANT TO C.R.C.P 56(h)** upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 25th day of February 2011, addressed as follows:

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